

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: January 9, 2024

* * * * *	*	UNPUBLISHED
YASHICA TUTTLE <i>and</i> MARCUS	*	
HAIRSTON <i>on behalf of their minor</i>	*	
<i>daughter, M.H.,</i>	*	
	*	
Petitioners,	*	No. 20-1622V
	*	Special Master Oler
v.	*	
	*	Attorneys' Fees and Costs
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *	*	

John W. Jensen, Jensen Law Group, Chapel Hill, NC, for Petitioners.

Parisa Tabassian, United States Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On November 17, 2020, Yashica Tuttle and Marcus Hairston ("Petitioners") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*² (the "Vaccine Act" or "Program") on behalf of their minor daughter, M.H. The petition alleged that M.H. suffered from Guillain-Barré syndrome ("GBS"), neuromyelitis optica, and demyelination type symptoms as a result of the influenza vaccine she received on November 10, 2017. ECF No. 1. On March 3, 2023, Petitioners filed a motion to voluntarily dismiss their petition. The undersigned issued her decision dismissing the petition for insufficient proof the same day. (ECF No. 37).

¹ The undersigned intends to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755.

On February 21, 2023, Petitioners filed an application for final attorneys' fees and costs. (ECF No. 31). ("Fees App."). Petitioners request total attorneys' fees and costs in the amount of \$43,024.24, representing \$42,131.25 in attorneys' fees and \$892.99 in attorneys' costs. Fees App. at 2. Respondent filed a response on February 22, 2023, stating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case" and requesting that the undersigned "exercise her discretion and determine a reasonable award for attorneys' fees and costs." Resp't's Resp. at 2. (ECF No. 32). Petitioners did not file a reply thereafter but did file a renewed fees motion on May 4, 2023. Upon review, the substance of this filing is the same as the original motion.

This matter is now ripe for consideration.

I. Reasonable Attorneys' Fees and Costs

Section 15(e) (1) of the Vaccine Act allows for the Special Master to award "reasonable attorneys' fees, and other costs." § 300aa-15(e)(1)(A)–(B). Petitioners are entitled to an award of reasonable attorneys' fees and costs if they are entitled to compensation under the Vaccine Act, or, even if they are unsuccessful, they are eligible so long as the Special Master finds that the petition was filed in good faith and with a reasonable basis. *Avera v. Sec'y of Health & Human Servs.*, 515 F.3d 1343, 1352 (Fed. Cir. 2008). Here, although the petition was eventually dismissed, the undersigned finds that the claim possessed good faith and reasonable basis while it was pending before the Court and notes that Respondent has also indicated in his response that he is satisfied both have been met as well. Accordingly, Petitioners are entitled to a final award of reasonable attorneys' fees and costs.

It is "well within the special master's discretion" to determine the reasonableness of fees. *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521–22 (Fed. Cir. 1993); *see also Hines v. Sec'y of Health & Human Servs.*, 22 Cl. Ct. 750, 753 (1991). ("[T]he reviewing court must grant the special master wide latitude in determining the reasonableness of both attorneys' fees and costs."). Applications for attorneys' fees must include contemporaneous and specific billing records that indicate the work performed and the number of hours spent on said work. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316–18 (2008).

Reasonable hourly rates are determined by looking at the "prevailing market rate" in the relevant community. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984). The "prevailing market rate" is akin to the rate "in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id.* at 895, n.11. The petitioner bears the burden of providing adequate evidence to prove that the requested hourly rate is reasonable. *Id.*

a. Reasonable Hourly Rates

Petitioners request the following hourly rates for the work of their counsel, Mr. John Jensen: \$415.00 per hour for work performed in 2019, \$433.00 per hour for work performed in 2020, \$455.00 per hour for work performed in 2021, and \$470.00 per hour for work performed in 2022 and 2023. The undersigned finds these rates to be reasonable and shall award them herein.

b. Reasonable Hours Expended

Attorneys' fees are awarded for the "number of hours reasonably expended on the litigation." *Avera*, 515 F.3d at 1348. Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). Additionally, it is well-established that billing for administrative/clerical tasks is not permitted in the Vaccine Program. *Rochester v. United States*, 18 Cl. Ct. 379, 387 (1989); *Arranga v. Sec'y of Health & Human Servs.*, No. 02-1616V, 2018 WL 2224959, at *3 (Fed. Cl. Spec. Mstr. Apr. 12, 2018).

The overall hours spent on this matter appear to be reasonable. The undersigned has reviewed the billing entries and finds that they adequately describe the work done on the case and the amount of time spent on that work. None of the entries appear objectionable, nor has Respondent identified any entries as objectionable. Accordingly, Petitioners are awarded final attorneys' fees in the amount of \$42,131.25.

c. Attorneys' Costs

Like attorneys' fees, a request for reimbursement of attorneys' costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioners request a total of \$892.99 in attorneys' costs. This amount is comprised of legal research and the Court's filing fee. The undersigned finds these costs to be reasonable and shall fully reimburse them.

II. Conclusion

In accordance with the Vaccine Act, 42 U.S.C. § 300aa-15(e) (2012), the undersigned has reviewed the billing records and costs in this case and finds that Petitioners' request for fees and costs is reasonable. The undersigned finds that it is reasonable to compensate Petitioners and their counsel as follows:

Attorneys' Fees Requested	\$42,131.25
(Reduction to Fees)	-
Total Attorneys' Fees Awarded	\$42,131.25
Attorneys' Costs Requested	\$892.99
(Reduction to Costs)	-
Total Attorneys' Costs Awarded	\$892.99
Total Amount Awarded	\$43,024.24

Accordingly, the undersigned awards a lump sum in the amount of **\$43,024.24**, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable jointly to Petitioners and their counsel of record, Mr. John Jensen. In the absence of

a motion for review filed pursuant to RCFC Appendix B, the clerk of the court shall enter judgment in accordance herewith.³

IT IS SO ORDERED.

s/ Katherine E. Oler

Katherine E. Oler
Special Master

³ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).